

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

	)	Civ. No. 07cv7849 (LTS)(FM)
BLUE CREEK PRODUCE LLC	)	
	)	
Plaintiff,	)	
	)	ECF Case
	)	
v.	)	
	)	
BIG CITY PRODUCE, INC.,	)	
MAURICIO RODRIGUEZ,	)	
STANLEY FORREST, JUN LI,	)	
MARIAN COHEN and INDUMATI	)	
KOTHARI t/a BIG CITY	)	
TROPICAL CORP.	)	
	)	
Defendants.	)	

**ANSWER OF DEFENDANT INDUMATI KOTHARI TO THE  
PLAINTIFF'S COMPLAINT**

Defendant, Indumati Kothari ("Mrs. Kothari"), improperly named in Plaintiff's complaint as "Indumati Kothari t/a Big City Tropical Corp.," responds to Plaintiff's Complaint ("Complaint") as follows:

1. The allegations contained in Paragraph 1 are legal conclusions to which no responsive pleading is required.

2. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 2 as to other Defendants and otherwise denies the allegations of Paragraph 2 of the Complaint.

3. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph 3 of the Complaint.

4a. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 4a of the Complaint.

4b. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 4b of the Complaint.

4c. Denies the allegations of Paragraph 4c of the Complaint except admits upon information and belief, BigCity Tropical Corporation ("BigCity Tropical") was a purchaser of wholesale quantities of produce doing business in Bronx, New York.

5. The allegations contained in Paragraph 5 of the Complaint consist of legal conclusions to which no responsive pleading is required.

6. Denies knowledge or information sufficient to form a belief as to the other Defendants and otherwise denies the allegations contained in Paragraph 6 of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the other Defendants and otherwise denies the allegations contained in Paragraph 7 of the Complaint.

8. The allegations contained in Paragraph 8 of the Complaint consist of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, Mrs. Kothari denies that she had any possession or control over any trust to which Plaintiff was a beneficiary.

9. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 9 of the Complaint.

10. Denies the allegations contained in Paragraph 10.

11. Admits upon information and belief, that Plaintiff filed a complaint against BigCity Tropical before the Secretary of Agriculture in the amount of \$22, 507.50. Mrs. Kothari denies any knowledge or notice of this complaint against BigCity Tropical prior to service of the instant action.

12. Admits upon information and belief the allegations contained in Paragraph 12 of the Complaint. Mrs. Kothari denies any knowledge or notice of any order awarding

reparations to Plaintiff prior to service of the instant action.

13. The allegations contained in Paragraph 13 consist of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, Mrs. Kothari denies any knowledge of Plaintiff or its alleged demand for payment prior to service of the instant action. Further, Mrs. Kothari had no control or possession over any trust assets and therefore, denies the allegations in Paragraph 13 to the extent they allege that she had any ability or involvement in maintaining and/or dissipating trust assets.

Count 1

14. The allegations in Paragraph 14 have been withdrawn by Plaintiff.

15. The allegations in Paragraph 15 have been withdrawn by Plaintiff.

16. The allegations in Paragraph 16 have been withdrawn by Plaintiff.

17. The allegations in Paragraph 17 have been withdrawn by Plaintiff.

Count 2

18. With respect to Paragraph 18, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-17 of this Answer as if set forth fully herein.

19. Denies the allegations of Paragraph 19 of the Complaint as to Mrs. Kothari and denies knowledge or information sufficient to form a belief as to all other Defendants.

Count 3

20. With respect to Paragraph 20, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-19 of this Answer as if set forth fully herein.

21. Denies the allegations of Paragraph 21 of the Complaint as to Mrs. Kothari and denies knowledge or information sufficient to form a belief as to all other Defendants.

Count 4

22. With respect to Paragraph 22, Mrs. Kothari repeats and realleges each

23. Paragraphs 23 through 26 are not addressed to Mrs. Kothari and therefore, no answer is required. To the extent a responsive pleading is required, Mrs. Kothari denies the allegations.

Count 5

27. With respect to Paragraph 27, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-26 of this Answer as if set forth fully herein.

28. Paragraphs 28 through 31 are not addressed to Mrs. Kothari and therefore, no answer is required. To the extent a responsive pleading is required, Mrs. Kothari denies the allegations.

Count 6

32. With respect to Paragraph 32, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-31 of this Answer as if set forth fully herein.

33. Paragraphs 33 through 36 are not addressed to Mrs. Kothari and therefore, no answer is required. To the extent a responsive pleading is required, Mrs. Kothari denies the allegations.

Count 7

37. With respect to Paragraph 37, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-36 of this Answer as if set forth fully herein.

38. Paragraphs 38 through 41 are not addressed to Mrs. Kothari and therefore, no answer is required. To the extent a responsive pleading is required, Mrs. Kothari denies the allegations.

Count 8

42. With respect to Paragraph 42, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-41 of this Answer as if set forth fully herein.

43. Denies the allegations contained in Paragraph 43 of the Complaint.

44. Denies the allegations contained in Paragraph 44 of the Complaint.

45. Denies the allegations contained in Paragraph 45 of the Complaint.

46. Denies the allegations contained in Paragraph 46 of the Complaint.

47. Denies the allegations contained in Paragraph 47 of the Complaint.

Count 9

48. With respect to Paragraph 48, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-47 of this Answer as if set forth fully herein.

49. Denies the allegations contained in Paragraph 49 of the Complaint.

50. Denies the allegations contained in Paragraph 50 of the Complaint.

51. Denies the allegations contained in Paragraph 51 of the Complaint.

52. Denies the allegations contained in Paragraph 52 of the Complaint.

53. Denies the allegations contained in Paragraph 53 of the Complaint.

54. Denies the allegations contained in Paragraph 54 of the Complaint.

Count 10

55. With respect to Paragraph 55, Mrs. Kothari repeats and realleges each answer contained in Paragraphs 1-54 of this Answer as if set forth fully herein.

56. The allegations in Paragraph 56 consist of legal conclusions to which no responsive legal pleading is required. To the extent a responsive pleading is required, Mrs. Kothari denies that she violated the Perishable Agriculture Commodities Act ("PACA").

57. The allegations in Paragraph 57 consist of legal conclusions to which no responsive legal pleading is required. To the extent a responsive pleading is required, Mrs. Kothari denies that she violated the PACA.

58. Mrs. Kothari denies any allegations in the Complaint not expressly admitted herein.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

The Complaint fails to state a cause of action for which relief can be granted.

### **SECOND DEFENSE**

Mrs. Kothari has no legal relationship or privity with Plaintiff and owes no duty to Plaintiff by which liability could be attributed to her.

### **THIRD DEFENSE**

The claims are barred by prescription, applicable statute of limitations, statute of repose, or the passage of time.

### **FOURTH DEFENSE**

Any claims for dissipation of trust assets are not pleaded with particularity as required by law, and thus fail to state a cause of action or claim for which relief can be granted.

### **FIFTH DEFENSE**

Plaintiff failed to preserve its interest in the trust asset as required by law.

### **SIXTH DEFENSE**

The claims are barred by the doctrines of waiver and/or estoppel.

### **SEVENTH DEFENSE**

Any losses are subject to an offset or credit in the amount of any reimbursement received by plaintiffs as a result of any insurance, or any amounts paid toward the alleged debt.

### **EIGHTH DEFENSE**

The claims are barred because losses alleged in the Complaint, none being admitted, were caused proximately, in whole or in part, by the fault of others. Accordingly, the claims are barred or must be reduced under the doctrine of contributory or comparative fault.

### **NINTH DEFENSE**

The claims are barred because the losses, if any, were the result of conduct of Plaintiff, third parties, or events that were extraordinary under the circumstances, not foreseeable in the normal course of events.

**TENTH DEFENSE**

Plaintiff failed to mitigate damages.

**ELEVENTH DEFENSE**

Mrs. Kothari hereby gives notice that she intends to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserves the right to amend this list to assert such defenses.

**CROSS CLAIMS AGAINST ALL DEFENDANTS**

1. Although Indumati Kothari has denied the allegations of Plaintiff with respect to any wrongdoing, nevertheless, in the event that there is a verdict of judgment in favor of the Plaintiff against Indumati Kothari, then, and in that event, Indumati Kothari demands judgment over and against defendants Big City Produce, Inc., Mauricio Rodriguez, Stanley Forrest, Jun Li and Marian Cohen by reason of his or her wrongful conduct being primary and/or active while any wrongdoing of Indumati Kothari, if any, was secondary and/or passive. The indemnity in such a case is to be full and complete.

2. That, although Indumati Kothari has denied the allegations of Plaintiff with respect to any alleged wrongdoing, nevertheless, if it is found that she is liable to the Plaintiff herein, all of which is denied, Indumati Kothari, on the basis of apportionment of responsibility for the alleged occurrence, is entitled to contribution from and judgment over and against defendants, Big City Produce, Inc., Mauricio Rodriguez, Stanley Forrest, Jun Li and Marian Cohen , for all or part of any verdict or judgment Plaintiff may recover against Indumati Kothari.

WHEREFORE, Defendant Indumati Kothari, incorrectly sued herein as Indumati Kothari t/a Big City Tropical Corp., demands:

- A. Judgment dismissing Plaintiff's complaint;
- B. In the event that the complaint is not dismissed, then full indemnity with respect to the cross-claims against Big City Produce, Inc., Mauricio

- C. In the event that full indemnity is not granted, then contribution pursuant to the cross-claims against Big City Produce, Inc., Mauricio Rodriguez, Stanley Forrest, Jun Li and Marian Cohen in accordance with degrees of wrongdoing, together with the costs and disbursements of this action;

All other further relief deemed just and proper.

**KAYE SCHOLER LLP**

By: s/Jeffrey A. Fuisz

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Counsel for Indumati Kothari

Dated: March 13, 2008